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### Supplemental Acts

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# ILLINOIS LAW REVIEW

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## SUPPLEMENTAL ACTS

### A CHAPTER IN CONSTITUTIONAL CONSTRUCTION:

BY ERNST FREUND.<sup>1</sup>

The question whether the constitution of Illinois permits the law upon a subject covered by a statute to be altered by an act purporting on its face to be an independent enactment, while in fact supplemental, instead of substituting, where it is possible, amended provisions for the sections of the statute affected by the change, is one of the many technical problems arising under the requirements of a written constitution. At the present moment, however, a special interest attaches to the question because it is believed to affect the validity of the new woman's suffrage act. Under these circumstances the latest decision involving the points<sup>2</sup> invites comment. The decision sustains an act of 1911 for the organization of school townships into high school districts, which contains a provision that

"For the purpose of supporting a high school the township established under the provisions of this act shall be regarded as a school district, and the board of education thereof shall in all respects have the powers and discharge the duties of boards of education elected under the general school law."

It was contended that this provision, incorporating as it does by reference a number of sections of the school law of 1909, is in reality an amendment of the latter act and should have complied with the constitutional requirements regarding amendatory acts. This contention the court denies, holding that the act is complete in itself and therefore, although it may incorporate provisions of earlier statutes, is simply an application of the familiar legislative

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1. Professor of Law in the University of Chicago.

2. *People v. Crossley*, 261 Ill. 78; 103 N. E. 537, December 17, 1913.

process of adopting certain portions of other statutes by reference, and that the constitutional requirement has no application to a statute of this kind. The court takes occasion to review its former decisions upon this subject and the conclusion which is reached calls for some criticism.

The constitution of Illinois, like that of a great many other states, provides:

"That no law shall be revived or amended by reference to its title only, but the law revived or section amended shall be inserted at length in the new act."<sup>3</sup>

This provision was intended to do away with a practice formerly common in the legislation of the states and which is not unknown to the legislative systems of foreign countries; that is to say, the practice of amending legislation by merely striking out or inserting words, or making additions or substitutions by reference to the place in the old law where the change should be introduced.<sup>4</sup> An amendatory act of this type would naturally convey no meaning whatever to one not having at hand the original act into which the new words or sentences are to be fitted. Confined to its original purpose, the constitutional provision is easily understood and complied with, and has never given rise to any serious difficulties.

In the case of *Badenoch v. Chicago*,<sup>5</sup> the Illinois Supreme Court, however, gave to this clause of the constitution an entirely different application. An act of May 11, 1905, undertook to provide for the garnishment or attachment of the salary and wages of certain municipal officers and employees. The court said:

"If the effect of the new act is to amend the general statutes of the state upon the subjects of attachment and garnishment by intermingling the provisions of the new act with the provisions of those statutes or by adding to those statutes new provisions, so as to create out of the general statutes heretofore in force upon the subject of attachment and garnishment and the new act a new law for the attachment and garnishment of the salaries and wages of the officers and employees of certain municipal corporations named in the title of the act, then the new act is clearly amendatory of the old statutes upon those subjects and in violation of said constitutional provisions."

And further:

"In the act under consideration the attachment and garnishment of salaries and wages of officers and employees of certain municipal corporations are the subjects dealt with, and, while the title of the act purports to be the title of a complete act, it appears from the body of the act that it is not a complete act in itself, but that the act is by itself, and when considered alone, wholly ineffective and inoperative, and that its provisions cannot be made effective and operative except by ingrafting the new act upon the

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3. Art. 4, Sec. 13.

4. Sutherland, *Statutory Construction*, Sec. 230.

5. 222 Ill. 71.

attachment and garnishment acts heretofore in force in this state. In the new act no provision is made for reducing the garnishing creditor's claim to judgment, or for exhausting his remedy against his debtor's tangible property by issuing an execution and having it returned no property found before a garnishment proceeding is commenced, nor is there any method pointed out in the new act for setting the garnishment proceeding in operation by the filing of an affidavit that the garnishing creditor has reduced his claim to judgment, that the personal property of his debtor has been exhausted, and that the municipality or officer sought to be garnished is indebted to the officer or employee against whom he has judgment. All the provisions regulating these matters must be found in the general statutes upon the subject of garnishment, and in the new act the grounds for attachment are not stated, and the affidavit and bond, which are prerequisites to the issuing of a writ of attachment, are not found, but these matters must also be sought in the general statutes of the state regulating the issuing of writs of attachment. It thus appears that the act of 1905 is not a complete act within itself, and that it amounts to nothing more than an attempt to change the existing statutes of the state upon the subject of attachment and garnishment, so as to make them broad enough to include within their terms the attachment and garnishment of the salaries and wages of the officers and employees of the municipal corporations named in the new act, by intermingling the provisions of the new act with those of the statutes upon those subjects, the effect of which clearly is to render it unconstitutional and void, as amounting to amendments of the general statutes upon the subjects of attachment and garnishment heretofore in force in this state."

Again, in the case of *O'Connell v. McClenathan*,<sup>6</sup> the Supreme Court had before it likewise an act relating to garnishment. This act, approved June 11, 1897, provided in substance that it should be lawful to summon administrators and executors as garnishees and that they might be garnished with respect to moneys, goods, or other estates belonging to any devisee or legatee under any will, or to any heir or distributee, but that no final judgment should be rendered against such administrators or executors until after an order of distribution had been made; also that no assignment or other disposition by an heir, legatee or devisee of his distributive legacy or devise in the hands of any administrator or executor should operate to defeat the garnishment of the same unless the assignment, transfer or other disposition should be reduced to writing and filed in the proper county clerk's office before the service or process of garnishment upon the executor or administrator. This act was likewise held unconstitutional as being in effect an amendment of the garnishment act.

These decisions cast considerable doubt upon the entire practice of supplemental legislation, which is universally and inevitably resorted to for the purpose of introducing modifications into the existing body of statutory law. The position taken by the Illinois Supreme Court in the two cases cited found some support in a

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6. 248 Ill. 350.

number of early decisions in the State of Nebraska,<sup>7</sup> and also in an Oregon decision.<sup>8</sup>

Neither of the three jurisdictions, however, which have declared supplemental acts to be unconstitutional as being in effect simply amendments which ought to have been enacted by re-enacting older statutes in amended form, had been able to carry out this supposed requirement with any degree of consistency. In the present case<sup>9</sup> the Supreme Court of Illinois reviews a number of decisions in which what in one case<sup>10</sup> has not inaptly been called "patchwork legislation" has been sustained. Even a cursory examination of the statutes of Illinois will reveal a considerable number of other instances in which the legislature has amended existing legislation by independent supplemental acts. One of the very first acts under the new constitution consisted of a single section providing that "the jurisdiction of the justice of the peace and police magistrates be, and is hereby, increased to \$200 in all civil causes in which they may now have, or may hereafter, have jurisdiction." This surely in substance was an amending act. One of the first amendments of the general city act of 1872 relating to the approval of ordinances was accomplished by the so-called Mayor's Bill of 1875,<sup>11</sup> which was an independent supplemental act clearly incomplete in itself and amendatory in character.

The acts of June 16, 1887,<sup>12</sup> and of June 14, 1909,<sup>13</sup> were amendments of article 5, section 1 of the City Act. The act of June 7, 1911,<sup>14</sup> amended article 7, section 9 of the City Act. The act of May 7, 1879, prohibiting the sale of real estate by virtue of powers of sale in mortgages was an independent supplemental act amending the general mortgage act of 1874.<sup>15</sup> The act of June 11, 1897, relating to publication of notices in chancery suits<sup>16</sup> was clearly incomplete in itself and might as well have been made an amendment of section 13 of the Chancery Act, yet its validity has never been questioned on that account. The act of June 3, 1897, relating to the probate of wills,<sup>17</sup> amended section 2 of the Wills

7. Beginning with 4 Neb. 353.

8. 14 Ore. 365.

9. *People v. Crossley*, 261 Ill. 78.

10. *People v. Knopf*, 183 Ill. 410-416.

11. Hurd's Revised Statutes, Cities, 372-376.

12. Hurd, Cities, 628.

13. Hurd, Cities, 696.

14. Hurd, Cities, 718.

15. See Hurd, Mortgages, Nos. 13, 14 and 22.

16. Hurd, Notices, Sec. 9.

17. Hurd, Wills, 21.

Act in important respects without referring to it. All these cases are practically undistinguishable from the acts supplemental to and amending the garnishment act, which were declared unconstitutional by the Supreme Court, and other instances could undoubtedly be discovered by a careful examination of the statutes.

The Supreme Court now undertakes to reconcile its previous decisions by differentiating legislation which, while modifying by implication existing statutes, is in itself complete and intelligible, and legislation not in itself complete or intelligible. The court should be allowed to speak for itself:

"If the act in question is not complete within itself, and it is necessary to read into the new law certain provisions of prior statutes in order to make it intelligible, and the new act is an attempt to amend the old law by intermingling new and different provisions with the old ones or by adding new provisions, so as to create out of the existing laws and the new act together a complete act upon the subject, then the new act is held to be amendatory of the old law, and the requirement of the Constitution must be complied with to make it valid. The acts involved in *Badenoch v. City of Chicago* [222 Ill. 71] and *O'Connell v. McClenathan* [248 Ill. 350] above cited, were both held to be unconstitutional because the new acts were not complete within themselves, and it was necessary to resort to previous legislation upon the subject of the acts in order to understand and enforce the new acts. It was distinctly said in both of those cases, however, that the acts condemned were not complete within themselves, and that it was necessary, in order to have any intelligent understanding of them, to refer to previous legislation relating to the same subject. A careful comparison of the high school law of 1911 with the acts held invalid in the two cases last above cited will clearly show that the act assailed in this case does not belong to the class of legislation condemned in the *Badenoch* and *McClenathan* cases."

And the following is offered by the court as a formulation of the invalid practice (designated as Rule 3):

"An act which is incomplete in itself, and in which new provisions are commingled with old ones, so that it is necessary to read the two acts together in order to determine what the law is, is an amendatory act and invalid under the Constitution, and it is unimportant, in such case, that the act does not purport to amend or revive any other statute. This proposition is supported by *People v. Knopf*, *supra*, *Badenoch v. City of Chicago*, *supra*, and *O'Connell v. McClenathan*, *supra*."

The decision in *People v. Crossley* thus adheres to the doctrine that the constitutional provision regarding amendments will under circumstances apply to acts purporting to be independent but in reality supplemental, and will invalidate them. Such a doctrine is both unsound in its foundation and unfortunate in its effects, for not only must it throw doubt upon acts which have stood unquestioned for years, but it is also altogether uncertain in its application.

The constitutional provision should be interpreted in the light of its history. The evil it dealt with was specific and well understood. As a remedy for this evil, the constitutional provision is

easily applicable. The draftsman of a statute will have no difficulty in recognizing the constitutional requirement or in complying with it, so long as it is confined to its original scope.

The doctrine applied to acts in form independent, and regulating a portion of a subject, small segment though it be, in the manner of the acts declared unconstitutional in the *Badenoch* and *O'Connell* cases, offers no definite criterion at all. Any one who is generally familiar with the law of garnishment would have understood perfectly the supplemental acts of 1897 and 1905. On the other hand, no lawyer however learned or intelligent, will be able to predict what kind of an act will appear to the Supreme Court as unintelligible or incomplete in itself. Measured by the only final test that we can apply to a rule of law, namely, the manner of its practical operation, the doctrine to which the Supreme Court pretends to adhere must be condemned. The court simply adds another pitfall to the many already existing which render legislation in Illinois a game of hazard.

The uncertainty produced in the minds of lawyers by the decisions of the Supreme Court is well illustrated by the opinion which was recently expressed in a discussion of a possible reorganization of the administration of the labor laws of Illinois. It was conceded that it would be desirable to consolidate the various bureaus and offices created by different statutes, in order to eliminate duplication or conflict of authority. But it was contended that under our constitution as interpreted by the Supreme Court, it would not be possible to effect this consolidation by one comprehensive statute, but that each of the acts conferring powers and duties upon the bureau of labor statistics, the factory inspection department, the free employment offices, etc., would have to be amended separately. Can it be doubted that this would be an extremely inconvenient and cumbersome method of legislation? Surely no such unreasonable requirement was intended to be imposed by the constitution. Most likely it is unnecessary under the decision of the Supreme Court; but as long as it adheres to the doctrine even in the qualified form now promulgated, such doubts will present themselves, and in order to avoid any risk the less desirable form of legislation will be preferred.

There are, of course, cases where it is very simple to avoid any risk and proceed by way of amendment. Congress has from time to time extended the subjects of copyright. It has done so at times by re-enacting the original provision, and including in the

enumeration the new subjects,<sup>18</sup> but it has also proceeded by simply enacting that the provisions of the act shall extend to photographs and negatives thereof.<sup>19</sup> The regular practice in Illinois would be the former method and it may be conceded to be preferable. Would the act of 1870 have to be considered invalid under the rule now formulated by the Supreme Court? Certainly the framers of the constitutional provision never had a supplemental act of this kind in mind, and as a matter of principle it is entirely unobjectionable.

The various methods of changing the substance of existing legislation without re-enacting some statute or section thereof in amended form may well be illustrated by the following examples taken from very recent Acts of Parliament:

1. 1 & 2 George V, c. 25 (1911): An act to Amend the Government of India Act, 1858, Sec. 1: "In Section 18 of the Government of India Act, 1858, the words "or to his legal personal representative such gratuity" shall be inserted after the words "such compensation, superannuation, or retiring allowance" where they secondly occur, and the words "or to personal representatives of such persons" shall be inserted after the words "public service," and also at the end of the section.

2. 1 & 2 George V, c. 44 (1911): An Act to amend the Military Manoeuvres Act, 1897, Sec. 4: "Subsection (2) of section 7 of the principal act (which imposes penalties on certain illegal acts) shall have effect as if the following paragraph were therein inserted after paragraph (b):

"or

(c) "erects or displays any notice or mark on or relating to  
"any authorized land or authorized source of water representing or implying that the use of such land or source  
"is not authorized."

3. 1 & 2 George V, c. 42 (1911) Sec. 1: "Among the courts before which a ship may be brought for adjudication under section 76 of the Merchant Shipping Act, 1894 (which relates to proceedings on forfeiture of a ship), there shall be included any British Court in a foreign country, being a court having admiralty jurisdiction, as if such a court were included among the courts specified in that section, and that section shall be construed and have effect accordingly."

4. 1 & 2 George V, c. 37 (1911): An act to amend the Con-

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18. Febr. 3, 1831, St. L. 4, p. 436; July 8, 1870, St. L. 16, p. 212.

19. Mch. 3, 1865, 13 St. L. 540.

veyancing and Law of Property Act, 1881, Sec. 1: "On any application under section 5 of the Act of 1881 the court may, if it thinks fit, as respects any purchaser or vendor, dispense with the service of any notice which is, by section 69 of that act, required to be served on the purchaser or vendor."

5. 1 & 2 George V, c. 30 (1911): An Act to Extend the Powers of the Public Health (Scotland), Act of 1897, Sec. 1 (1): "The powers conferred by the Public Health (Scotland) Act, 1897, upon a local authority under that act, enabling such local authority to carry sewers within their district, may be exercised by any body of trustees or commissioners authorized to supply water by any local act, within the limits of water supply under such act, in the same way and subject to the like restrictions in relation to water mains as they may be exercised in relation to sewers under the said first mentioned act by the local authority within the district of such authority."

No. 1 and No. 2 would violate the provision of our state constitution; No. 3, No. 4 and No. 5 would probably fall under the ban of rule (3) formulated in *People v. Crossley*, for they are certainly incomplete enactments and plainly purport to deal with subjects regulated by existing statutes. Yet the form chosen by the legislature is simple, and may be quite as intelligible to legislators and lawyers as the re-enactment of a section torn from the context of the statute of which it forms part.

It is not merely that the rule laid down by the Supreme Court is extraordinarily ambiguous in its scope. Even if it were capable of clearer definition, it would be unfortunate to tie the hands of the legislature in a matter that is peculiarly one of discretion. It must be obvious that it may be very unadvisable to reopen an entire section for legislative discussion when all that is desired is a minor change, the scope and effect of which can be made perfectly clear by an independent provision. Indeed, the old and now forbidden method of amendment, capable as it was of abuse, gave a much readier clue to the intended and effected change than the present method which requires a careful comparison between the old section and the new. The legislature guards against this inconvenience by requiring the new or altered matter to be printed in the bills in italics; but this device is not adopted by our printed session laws. Under these circumstances the method of proceeding by supplemental act should rather be encouraged than otherwise.

The inconvenience of incorporating the desired change in a

re-enacted section is especially sensible where that section is long. In several bills introduced into the legislature in recent years, proposing to add to the powers of city councils, it was deemed necessary to reprint the entire ninety-six items of article V, section 1 of the City Act—certainly a most superfluous way of proceeding, by which nothing whatever is gained. As shown above, powers have been added in the past by independent supplemental act; but as long as the *Badenoch* and *McConnell* cases stand unreversed, the latter method is unsafe.

Where a proposed change affects two or more existing sections, as in 1 and 2 George V, c. 37,<sup>20</sup> it would tax the legislator's ingenuity to determine which of the sections affected should be re-enacted with amendments, while either a new section or a supplemental act would avoid the difficulty altogether. Can any one point to a provision of our constitution that requires a change to be effected by an additional section rather than by a supplemental act? Or can article IV, section 13, by any possibility be construed to have that meaning? A new section cannot insert at length any amended section, and wherever an additional section would be legitimate, an independent supplemental act must be likewise legitimate.

The following difficulty, moreover, suggests itself where the proposed change affects matter covered by two existing acts. Suppose there are two acts, one relating to safety in factories, the other relating to safety in mines. The legislature desires to add to the penal provisions a provision for civil liability for non-compliance with safety requirements. Under the case of *Starne v. People*,<sup>21</sup> it may be contended that the provision for civil liability must apply to mine owners and factory owners equally.<sup>22</sup> An independent supplemental act which in substance amends both the mining act and the factory act would thus be the safest as well as the most desirable way to proceed; for of two separate amendatory bills one might fail to pass, and the one passed might therefore turn out to be invalid. But the supplemental act may be regarded as obnoxious to the third rule formulated in *People v. Crossley*. The draftsman would thus find himself between "the devil and the deep sea." The Supreme Court would probably sustain the supplemental act; but in doing so it would again cut down the province of the application of rule (3) of *People v. Crossley*.

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20. Example No. 4, above quoted.

21. 222 Ill. 189.

22. See Laws of 1913, p. 359.

Other difficulties must arise where, as in Illinois after 1870, amendments are to apply to special charters, and yet are by the constitution required to be made by general act; or where the unamended section continues to have effect for some purposes, as in the various acts increasing the salaries of the judges of the Supreme Court. In such cases the constitutional provision would be impracticable and it is therefore extremely unlikely that it was intended to impede the flexibility of legislative methods.

It has been generally recognized by American courts that constitutional provisions regarding style and form of legislation should be liberally interpreted, since the only principle which they involve is protection against fraud or surprise, and since dialectical refinements as to their precise scope and meaning inevitably lead to insoluble controversies. The few instances of strict interpretation have generally resulted in an uncertainty possibly more harmful than the original loose practices, and have produced precautionary habits of diffuseness which particularly in the matter of titles of acts, have assumed the proportions of a serious evil.

In extending the provision regarding amending acts to independent supplemental statutes, Illinois has the support of only one or two other jurisdictions. The decisions on the application of the provision have been believed by many lawyers to be inconsistent, and beyond any doubt they have been confusing; even from the decision in *People v. Crossley* two judges dissented. The wise course would have been to repudiate the doctrine of the *Badenoch* and *McClenathan* cases; instead of this, however, the Supreme Court establishes an unworkable distinction, which does not fit the decided cases, and perpetuates a difficulty which will continue to vex draftsmen of statutes, and provide a fruitful field of litigation.

The operation of the constitutional provision should be confined to amendatory acts which in terms purport to amend specific provisions of earlier acts and which seek to accomplish the change by substituting for or adding to words of some section of an existing act other or new words to constitute part of such section.

#### ADDENDUM.

Since the above was written, there has appeared the decision of the Supreme Court in the case of *Brooks v. Hatch*, 261 Ill. 179, 103 N. E. 746 (December 17, 1913).

The Drainage or Levee Act of 1870, as amended by act of June 30, 1885 (Revised Statutes, Chap. 42), provides in section 17½ that the amount assessed for keeping a levee or ditch in repair, shall not in the aggregate amount to a sum in any one year greater than would be produced by thirty cents per acre on all the lands within the district. The

amount may also be used to complete, strengthen, protect, and add to ditches and levees. Section 26½ regulates the proceedings in connection with such assessment in considerable detail.

An act of 1905, professing to be an independent act, authorized the use of the amounts raised by assessment for the erection and operation of pumping plants. An amendatory act to the act of 1905, passed in 1907, authorized assessment up to sixty cents per acre for the maintenance of pumping plants, and a further amendatory act of 1911, repealing the provision of 1907, authorized for the use of such pumping plants such amount as the county court should find accruing to the lands by reason of the operation of said plants.

The Supreme Court holds that the act of 1905 was unnecessary, since the erection of pumping plants is an implied power under the Drainage and Levee Act. "The effect of the act of 1905, if valid, was to make express and explicit that which was theretofore necessarily implied. By thus ingrafting said act of 1905 upon the Levee Act said sections 17½ and 26½ are so amended as to expressly authorize the expenditure of a portion of the annual assessments of benefits for the operation of pumping plants as well as for the repair of the levees and ditches. As it was purely an amendatory act and was passed in violation of section 13 of article 4 of the constitution it was invalid. The amendment of 1907 is a more flagrant violation of the constitution than the original act of 1905, as it amends said sections 17½ and 26½ of the Levee Act by substituting in the restriction therein placed upon the provision for the annual assessments for benefits the sum of sixty cents per acre for that of thirty cents per acre."

The decision thus again applies the doctrine that under certain conditions new provisions concerning matters covered by existing statutes must in order to be valid assume the form of amendatory acts. The unsoundness of the doctrine as applied to this case can be clearly demonstrated.

Whether the power to construct pumping plants was implied or not, the legislature had power to express it, and this the Supreme Court concedes. But if so, had not the legislature power to resolve this doubt in a separate section? Is there anything in the constitution that prevents the legislature from arranging the matter of its statutes in as many sections as it pleases? And if it would have been placed in a separate section in the original act why could such a section not have been added by an amendatory act? And as the constitutional provision cannot possibly apply to additional sections (the requirement of re-enactment not fitting such a case) there is no constitutional provision at all to apply, and the legislature is free to proceed by amendatory act or by supplemental act. There is no escape from this conclusion. The Supreme Court overlooks the distinction between additional and corrective matter.

The narrow view taken by the Supreme Court is moreover most unfortunate in its practical results.

It is not desirable that long and involved sections should be further complicated by the addition of provisoes; let any one who is not impressed with this fact, look at the new Income Tax Act. As a matter of good drafting the provision regarding pumping plants and the higher rate of assessment for their use should have preferably been placed in a separate section. Intelligent legislation demands a certain simplicity of form. The Supreme Court instead of encouraging practices that make for intelligibility, forces cumbersome and inconvenient methods of legislation. The case of *People v. Crossley* gave hope for a more open-minded construction of the constitution; but that hope is destroyed by this decision.